



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-P

MAY 06 2019

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Revised Implementation Guidance for Section 1225 of the Water Resources Development Act (WRDA) of 2018, Upper Mississippi River Protection

1. The Assistant Secretary of the Army, Civil Works approved on 2 May 2019 Section 1225 of WRDA 2018. The attached implementation guidance is posted for internal and external use on the U.S. Army Corps of Engineers official WRDA website:
<http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Please ensure wide dissemination of this guidance. Questions regarding this implementation guidance should be directed to the Headquarters POC, Ada Benavides, Senior Policy Advisor, Planning and Policy Division, at (202) 761-0415 or ada.benavides@usace.army.mil.

JAMES C. DALTON, P.E.
Director of Civil Works

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DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

MAY -2 2019

MEMORANDUM FOR THE COMMANDING GENERAL, U.S. ARMY CORPS OF
ENGINEERS

SUBJECT: Implementation Guidance for Section 1225 of the Water Resources and
Development Act of 2018, Upper Mississippi River Protection

1. Reference.

- a. Section 2010 of Water Resources Reform and Development Act of 2014 (WRRDA 2014), Upper Mississippi River Protection.
- b. Interim Guidance on the Conduct of Disposition Studies, dated 22 August 2016.
- c. Engineer Regulation (ER) 1105-2-100, Planning Guidance Notebook.
- d. Implementation Guidance for Sections 1015 and 1023 of the WRRDA 2014, Contributed Funds, dated 11 February 2015.

2. Section 1225 of Water Resources Development Act of 2018 (WRDA 2018) amends Section 2010 of WRRDA 2014 to direct that the ongoing disposition study for Upper St. Anthony Falls (USAF), Lower St. Anthony Falls (LSAF), and Lock and Dam 1 (L&D 1) be modified to provide a separate report for USAF and a report for LSAF and L&D 1. Section 1225 provides for additional considerations in completing a disposition study report for USAF and directs the Secretary to accept and expend funds contributed by a state or political subdivision of a state to carry out the USAF study. Section 1225 is enclosed.

3. Subject to the availability of funding:

- a. The U.S. Army Corps of Engineers (Corps) St. Paul District Commander will expedite the ongoing disposition study and report for the USAF Lock and Dam that is separate from any report on any other locks and dams being considered in the ongoing disposition study. To the extent practicable the District Commander will narrow the scope of the ongoing disposition study to focus on the evaluation of alternatives for the disposition of the USAF Lock and Dam.

- 1) The report on the disposition of the USAF Lock and Dam will identify opportunities to modify the federally owned facilities for the purposes of recreation and/or ecosystem restoration. If such opportunities exist but are likely to be more costly

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than continued operation and maintenance of the facilities, detailed investigation of such opportunities will be subject to initiation of a cost-shared feasibility study with a non-Federal interest in accordance with guidance in reference 1b.

2) While the District Commander will not formulate alternatives for ecosystem restoration or recreation in the disposition study, the disposition study will fully evaluate alternatives to transfer jurisdiction or ownership of the facilities to other federal agencies and non-Federal entities. Such alternatives, if recommended and authorized by Congress, may ultimately result in the modification of the facilities by entities other than the Corps for purposes of recreation or ecosystem restoration.

3) The report on the disposition of the USAF Lock and Dam will also explore alternatives for the partial disposition of the USAF Lock and Dam facilities and surrounding real property. The disposition study will consider retaining real property or improvements necessary to maintain any flood risk management benefits of the project in federal ownership.

b. The District Commander will provide the draft USAF Lock and Dam report with the concurrence of the Major Subordinate Command (MSC) Commander to the Director of Civil Works (DCW) within 15 days of a final draft report being completed. The Deputy Assistant Secretary for the Army for Civil Works, Projects, Planning and Review will participate in the Corps Senior Leader meeting that shall be held before a Director's Report is finalized. Upon DCW review and approval of the Director's Report, the signed report will be provided within two business days to the Assistant Secretary of the Army for Civil Works (ASA(CW)) for review and action. Upon Administration clearance of the report the ASA(CW) will transmit the Director's Report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate in accordance with Section 1117(b) of WRDA 2018.

4. Section 1225(e) directs the Secretary to accept and expend funds that are contributed by a State or a political subdivision of a State under 33 U.S.C. 701h-1, which deals with advanced funds, to carry out the USAF Lock and Dam disposition study. However, any funds proposed to be contributed by such entities, to carry out the disposition study, will be accepted following the standard procedures in reference 1d for the acceptance of contributed funds under 33 U.S.C. 701h. Funds contributed under 33 U.S.C. 701h are not eligible for credit or repayment.

5. Following delivery of the USAF report on the disposition of the USAF Lock and Dam, and subject to the availability of funding, the District Commander will continue the ongoing disposition study by completing the evaluation of alternatives for the disposition of the LSAF Lock and Dam and L&D 1. Recommendations for the disposition of those facilities will be presented in a separate report to the DCW through the MSC. The Deputy Assistant Secretary for the Army for Civil Works, Projects, Planning and Review will participate in the Corps Senior Leader meeting that shall be held before a Director's

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Report is finalized. Upon DCW review and approval of the Director's Report, the signed report will be provided within two business days to the ASA(CW) for review and action. The ASA(CW) will transmit the approved Director's Report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate in accordance with Section 1117(b) of WRDA 2018.

6. This guidance shall be transmitted to the appropriate Corps Division and District Commanders and posted to the Corps' WRDA website within five business days of receipt (written or electronic) from this office. Guidance shall be transmitted as is and without additional guidance attached.

7. Questions regarding this implementation guidance should be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works, at gib.a.owen.civ@mail.mil or 703-695-4641.

A handwritten signature in black ink, appearing to read "R. D. James", with a stylized flourish at the end.

Enclosure

R. D. JAMES
Assistant Secretary of the Army
(Civil Works)

cf: MG Scott Spellmon, Deputy Commanding General, Civil and Emergency Operations
James Dalton, Director of Civil Works

Water Resources Development Act of 2018, Section 1225 - Upper Mississippi River Protection.

Section 2010 of the Water Resources Reform and Development Act of 2014 (128 Stat. 1270) is amended by adding at the end the following:

(d) **CONSIDERATIONS.** In carrying out a disposition study with respect to the Upper St. Anthony Falls Lock and Dam, including a disposition study under section 216 of the Flood Control Act of 1970 (33 U.S.C. 549a), the Secretary shall expedite completion of such study and shall produce a report on the Upper St. Anthony Falls Lock and Dam that is separate from any report on any other lock or dam included in such study that includes plans for

- (1) carrying out modifications to the Upper St. Anthony Falls Lock and Dam to
 - (A) preserve and enhance recreational opportunities and the health of the ecosystem; and
 - (B) maintain the benefits to the natural ecosystem and human environment;
- (2) a partial disposition of the Upper St. Anthony Falls Lock and Dam facility and surrounding real property that preserves any portion of the Upper St. Anthony Falls Lock and Dam necessary to maintain flood control; and
- (3) expediting the disposition described in this subsection.

(e) **CONTRIBUTED FUNDS.** The Secretary shall accept and expend funds to carry out the study described in subsection (d) that are contributed by a State or a political subdivision of a State under the Act of October 15, 1940 (33 U.S.C. 701h-1).

FOR REFERENCE ONLY NOT PART OF THE GUIDANCE

Water Resources Development Act of 2018, Section 1117 – Inclusion of Project or Facility in Corps of Engineers Workplan

(a) IN GENERAL. The Secretary shall, to the maximum extent practicable, include in the future workplan of the Corps any authorized project or facility of the Corps of Engineers

(1) that the Secretary has studied for disposition under an existing authority, including by carrying out a disposition study under section 216 of the Flood Control Act of 1970 (33 U.S.C. 549a); and

(2) for which a final report by the Director of Civil Works has been completed.

(b) NOTIFICATION TO COMMITTEES.—Upon completion of a final report referred to in subsection (a), the Secretary shall transmit a copy of the report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.